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110-741

Supreme Court of the United States,

In the Matter of Richard L. Leggett, a Bankrupt, Francis H. Leggett, as Trustee of Abraham Leggett, deceased, Appellant, vs. John J. Allen, Assignee of said Bankrupt, Appellee.	No. ~~1199.~~ 821

Appellee's Brief on Motion to Dismiss Appeal for want of Jurisdiction.

This appeal is taken by Francis H. Leggett, as Trustee, a supposed creditor of the bankrupt, from an order or decree of the Circuit Court of the Eastern District of New York, expunging and disallowing a claim proved in these bankruptcy proceedings:

FACTS.

The petition in bankruptcy was filed in the Eastern District of New York, April 30, 1878, and the adjudication was made May 3, 1878.

Abraham Leggett, the supposed creditor, and the father

of the bankrupt, died in August, 1878, and afterwards his legal representatives proved a claim against the bankrupt's estate for $38,510.59 (thirty-eight thousand five hundred and ten $\frac{59}{100}$ dollars.)

John J. Allen, the assignee of said bankrupt, commenced proceedings by petition under section 5081 of the Revised Statutes, and General Order No. 34, for the re-examination of said claim, and a hearing was had in said district court, and an order was made December 27, 1880, allowing said claim.

The assignee being dissatisfied with the allowance of said claim, appealed from said order of the District Court to the Circuit Court of said district, and the Circuit Court reversed the order of the District Court, and ordered that the said claim be disallowed and expunged, with leave to the creditor to file a proper proof of debt at the proper time.

From this order or decree an appeal is now taken by the supposed creditor to this court.

The appellee, John J. Allen, as assignee of said bankrupt, now moves to dismiss said appeal on the ground that this court has no jurisdiction to review the order of the Circuit Court, and that the order of the Circuit Court is final and conclusive.

First.

This controversy is between the creditor and the assignee in bankruptcy, relative to the merits of a claim against the bankrupt's estate.

It is not an independent suit. It is a proceeding to have a claim proved against the bankrupt's estate, so as to obtain dividends, and is only a part of the suit in bankruptcy.

The order or decree appealed from is not a final judgment of the Circuit Court in a civil action within the provisions of section 691 of the Revised Statutes.

It was an order made in the course of a bankruptcy proceeding in the exercise of their supervisory jurisdiction as provided in section 4986.

Such an order is not appealable.

Wiswall *vs.* Campbell, 93 U. S. (3 Otto) 347, and 15 N. Bankruptcy Register, 421.

This case is exactly in point, and the Chief Justice in closing his opinion, says the question was fairly presented and fully argued.

The cases cited are :

Morgan *vs.* Thornhill, 11 Wall. 74.
Hall *vs.* Allen, 12 Wall. 454.
Mead *vs.* Thompson, 15 Wall., 638.
Marshall *vs.* Knox, 16 Wall., 555.
Coit *vs.* Robinson, 19 Wall., 274.
Stickney *vs.* Wilt, 23 Wall., 150.
Sandusky *vs.* Bank, 23 Wall., 293.

Wiswall *vs.* Campbell has since been approved in Hill *vs.* Thompson, 4 Otto, 322.

Second.

The fact that the assignee took the appeal to the Circuit instead of the supposed creditor, in no way gives this appellant a right to appeal to this court.

The same principle of law applies in either case.

In Wiswall *vs.* Campbell, this court based its decision upon the ground that the proceeding was not an in-

dependent action, but a proceeding in the bankruptcy suit, and therefore was not appealable.

The decision was not put upon the ground that section 4985 provides that the final judgment of the Circuit Court rendered upon any appeal, provided for in the "preceding section," should be conclusive, &c.

In that case the supposed creditor took the appeal, and it was therefore an appeal provided for in the preceding section, viz.: 4984, which seems to refer only to appeals by creditors. But the decision is put upon the ground that no judgment of the Circuit Court in proceedings of this nature is appealable, no matter whether the assignee or the creditor is the appellant.

Therefore, it is not important to inquire whether the words "preceding section," in section 4985, refer to section 4984, or to section 8 of the original Bankrupt Act, which latter section treated of appeals generally.

Vol. 14, U. S. Statutes at Large, pages 520 and 528, sections 8 and 24.

It would seem that when the revisers split up sections 8 and 24 into several distinct sections, viz.: 4980 to 4985, inclusive, they omitted to change the wording so as to make it correspond with the new arrangement of sections.

It is difficult to see why a judgment rendered upon an appeal by a creditor should be conclusive, and that rendered upon an appeal by an assignee, be appealable.

Section 4980 gives both the right to appeal from the District to the Circuit Courts.

It is therefore submitted that it was the intention of the revisers that the word "section" should have read "sections."

There is nothing in the law or practice which give the appellant the right to this appeal, and it is therefore respectfully submitted that this appeal be dismissed, with costs.

A. J. FALLS,
of Counsel for John J. Allen,
Assignee, Appellee.

112-74

Supreme Court of the United States.

IN THE MATTER

OF

RICHARD L. LEGGETT, BANKRUPT.

FRANCIS H. LEGGETT, AS TRUSTEE OF ABRAHAM LEGGETT, DECEASED,

Appellant,

vs.

JOHN J. ALLEN, ASSIGNEE,

Appellee.

Appellant's Brief on Motion to Dismiss.

THORNDIKE SAUNDERS,
For Appellant.

A. J. FALLS,
For Appellee.

NEW YORK:
EVENING POST JOB PRINTING OFFICE, BROADWAY AND FULTON ST.
(Law Telephone 541.)

1884.

Supreme Court of the United States.

In the Matter of Richard L. Leggett, Bankrupt, Francis H. Leggett, As Trustee of Abraham Leggett, deceased, Appellant, vs. John J. Allen, Assignee of said bankrupt, Appellee.	No. 1,199.

Brief for Appellant on Motion to Dismiss Appeal.

The District Court of the United States for the Eastern District of New York allowed a claim proved by this appellant's predecessor, $38,510.59. The *assignee* appealed to the Circuit Court and succeeded, and the creditor appeals to this court. The assignee moves to dismiss for want of jurisdiction in this court. The creditor insists that this court has jurisdiction, for the following reasons:

Section 692, U. S. R. S., provides that an appeal shall be allowed to the Supreme Court from all final decrees of

any circuit court in cases of equity * * * jurisdiction * * and the Supreme Court is required to receive, hear and determine such appeals; and

Section 691 provides that all final judgments of any circuit court in civil actions removed there from any district court by appeal, may be re-examined in the Supreme Court.

This appeal falls directly within the intent of these sections.

The order of the Circuit Court is a final decree.

It determines the particular cause.

Weston *v.* City Council, 2 Pet., 449.

It disposes of the whole merits, leaving no question for future action.

Bebee *v.* Russell, 19 How. (U. S.), 283, 285.
Bostwick *v.* Brinckerhoff, 16 Otto, 3.

After it, nothing remains but distribution, which is in the nature of execution and does not determine anything, and the discharge of the assignee, which is merely a receipt in full, and in no sense a determination. That these subsequent proceedings do not affect the character of the decree as to which, it is said, they are subsidiary. See

Forgay *v.* Conrad, 6 How., 201.
Whiting *v.* Bank of U. S., 13 Pet., 15.
Michod *v.* Girod, 4 How., 503.
McMiben *v.* Perin, 20 How., 136.
U. S. *v.* Fossatt, 21 How., 450.
Day *v.* Washburn, 23 How., 310.
Railroad Co. *v.* Soutter, 2 Wall., 440.
Merriam *v.* Haas, 3 Wall., 687.
Thompson *v.* Dean, 7 Wall., 345.
Railroad Co. *v.* Bradleys, 7 Wall., 575.
French *v.* Shoemaker, 12 Wall., 98.

To say it is not appealable because it is a part of the bankruptcy action is not to say that the decree is not final.

A single decree, in which the several matters between all the parties are all detailed and determined, does not exist in a bankruptcy case. If there were such, it would have to come after the distribution, and an appeal then would be inoperative. A bankruptcy proceeding is not a single suit; it is a bundle of proceedings or "cases under the act." The only "final decrees" are in those several cases of proceedings *under* the *act* in the bankruptcy of the individual concerned. Section of Revised Statutes 4985 calls the determination of the appeal of a creditor in the circuit a "final judgment." There is a final judgment on the application for a discharge. There is a final judgment on each separate case brought under the act. A case in equity is brought "under the act," and if not, the District Court has no jurisdiction (Morgan *v.* Thornhill, 11 Wall., 65). Yet here there is no difficulty found about there being a final decree, and a right of appeal to this court. Nor is it essential by the language of §§ 692, 691, that the final decree shall be that of the *whole* of the case, or that of a separate or independent case. The language is "final decree *in* a case," and we insist that in such a case there may be more than one final decree.

This proceeding by the creditor to establish his claim is a part of the system or group of remedies or cases in bankruptcy (§ 4972). The creditor must file his proof just as the assignee must make his demand upon the debtors of, or persons under, obligation to the bankrupt or holders of his property, by the issuing and publication of notice, &c. (§§ 5054, 5055). These are the regular, formal proceedings. If the debt is not paid or the contract performed or property delivered, a suit in equity or action at law follows, *under* the provisions of the act, and *under* those provisions, appeals or writs of error are taken; just so *under* those proceedings, if the creditor's claim is attacked, certain proceedings and appeals follow.

This suit in equity is a part of the general bankruptcy remedy offered by the act.

The act says, in effect, that such and such final judgments must be sought by the old course of action at law or suit in equity. Such and such final jndgment by other

formal proceeding. A debtor to the bankrupt is brought under the jurisdiction of the court in one way, a creditor by another. The court having granted to it by the law (§ 4972) jurisdiction of the subject matter can then administer the proper relief. To be "a part of the case in bankruptcy" so as to fall within that objection it should be such a proceeding that no substantial right is imperilled until some final determination in the case, or such an act as by its omission would make the proceedings incomplete. Now, if the creditor does not file his proof, the case in bankruptcy goes on without him.

That his claim may be discharged is of no effect in determining that certain proceedings, which may or may not be taken by him are or not a part of the bankruptcy proceeding. It is as much an object of the bankruptcy to collect the assets as to discharge the debts, and the means or proceedings to perform one object are as essential to be provided as are those for the other. The act might have left the assignee to a general bill to ascertain priorities and rights, but it has, instead, adopted such forms of proceedings as to make those holding the affirmative in the several matters *the actors*. These several cases or proceedings are no more independent of each other than if the statute instead of saying that in collecting the assets the assignee may use the ordinary forms of action it had, like § 4984, stated those proceedings in detail, *i. e.*, made a code of practice.

These several final judgments taken together form the final decree in the bankruptcy proceedings.

This is not the only case where there may be several "final decrees" in one case affecting independent interests. In Thompson *v.* Dean, 7 Wall., 345, this court recognized this fact, also in Clifton *v.* Sheldon, 23 How. U. S., 483, where freight was awarded separately against each of the claimants in proportion to the cotton shipped by each one. "The rights of each were distinct and separate," and in Germain *v.* Mason, 12 Wall., 259, where separate judgment against one defendant for a sum of money in which other defendants against whom the same judgment ran as to other matters, had no interest, held, to have right of ap-

peal without joining the other defendants, and so in other cases.

The act designates this appeal as a case (old section, 8 R. S. Secs. 4981, 4984), and also a suit (§ 4985), and the bankruptcy proceeding is a case of equity jurisdiction.

Coit *v.* Robinson, 19 Wall., 274, Bradley, *J.*

It is a civil action removed into the Circuit Court by appeal from the District Court.

This appeal to the Circuit Court was not under the supervisory power of that court.

The appeal to this court may well enough be considered as authorized under §§ 4972, 4989 of the Revised Statutes.

It is said that the statute, § 4985 provides that the judgment of the Circuit Court shall be conclusive. That is not true of a case like the present. By that section the decree of the Circuit Court is conclusive only in a case where the *creditor* appealed to the Circuit Court. Reason for this is obious, to wit: If the creditor succeeded in the District Court, it is to be presumed that there is enough in the case to warrant the final hearing in this court, while in any event one appeal to the Circuit ought to be allowed him, if unsuccessful in the District Court. But it is said of the language of § 4985, that in referring to § 4984 only, the revisers blundered. This is not true. By old section 8, appeal to Circuit Court was allowed to creditor or to assignee. By old section 24 it was provided that where the creditor appeals, he shall follow certain rules of pleading and practice, and that the final judgment of the Circuit Court shall be conclusive. And this is precisely what the revisers did in §§ 4980, 4984 and 4985. They left the law as they found it.

Directly within this section falls the case of Wiswall *v.* Campbell (93 U. S., 347), which was an appeal from the District to the Circuit by a *creditor*. He had been defeated twice—having had one appeal.

Morgan *v.* Thornhill, 11 Wall., 71, was an appeal from an adjudication of bankruptcy, held, that the Circuit Court had reversed this order under its supervisory jurisdiction.

Hall *v.* Allen, 12 Wall., 454, was a question of priority between separate and partnership creditors reviewed in the same manner.

Mead *v.* Thompson, 15 Wall, 638, was a case of review of discharge by petition in Circuit Court.

Marshall *v.* Knox, 16 Wall., 555, was in form a bill in equity, but it asked a review of an order of the District Court directing delivery of property to assignee, "as *a bill to review* it is not appealable," but &c.

Coit *v.* Robinson, 19 Wall., 274, was a petition of review of a bankruptcy discharge.

Stickney *v.* Wilt, 23 Wall., 150, was a petition to ascertain liens, held to be within the supervisory power.

Sandusky *v.* Natl. B'k., *id.* 293, was petition to revise adjudication order.

Hill *v.* Thompson, 4 Otto (94 U. S.), 322, was review of adjudication of bankruptcy.

It is respectfully submitted that in all of these cases the party defeated had been allowed one appeal, and that in none of them is presented the case we now submit.

That the practically unlimited power conferred by the Constitution of the United States (Art. 1, § 8, Subd. 4, and Art. III., § 1, 2), should not be limited by too narrow construction of the acts of Congress, and that this motion to dismiss should be denied.

Respectfully submitted.

New York, 1st March, 1884.

THORNDIKE SAUNDERS,
Of Counsel with Appellant.